



आयकरअपीलीयअधिकरण,राजकोटन्यायपीठ,राजकोट।
IN THE INCOME TAX APPELLATE TRIBUNAL, "SMC"
RAJKOT BENCH, RAJKOT

BEFORE DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER

आयकरअपील सं. /ITA No.480/RJT/2025
निर्धारण वर्ष/Assessment Year : 2008-09

Dineshbhai Mohanbhai Dangariya Plot No.4192/A, Road No. F, GIDC Phase 3, Dared, Jamnagar, Gujarat - 361004	बनाम/ Vs	Income Tax Officer Ward – 2(10), Jamnagar
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AAWPD8006B		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

निर्धारिती की ओर से/Assessee by : Shri Chetan Agarwal, Ld. AR
राजस्वकी ओर से / Revenue by : Shri Abhimanyu Singh Yadav, Ld. Sr. DR

सुनवाई की तारीख/**Date of Hearing** : **15/09/2025**

घोषणा की तारीख/**Date of Pronouncement** : **25/11/2025**

आदेश/ORDER

Per Dr. Arjun Lal Saini, A.M:

Captioned appeal filed by the assessee pertaining to Assessment Year 2008-09, is directed against the order passed under section 250 of the Income Tax Act, 1961 (hereinafter referred to as "the Act") by National Faceless Appeal Centre (NFAC), Delhi/Commissioner of Income-tax (Appeals), dated 21.07.2025, which in turn arises out of a penalty order passed by Assessing Officer u/s. 271B of the Act on 26.09.2016.

2. Grounds of Appeal raised by the assessee are as under:

"1. The Ld. CIT(A) erred in law as well as on fact in upholding penalty of Rs.79,287/- imposed by Ld. AO u/s 271B of the Act."



3. The brief facts qua the issue are that the grounds of appeal are inter-related and have been directed against imposition of penalty u/s 271B of the Act amounting to Rs.79,287/- by the Assessing Officer. During the course of assessment proceedings, the Assessing officer observed that the assessee had a turnover of more than Rs.40,00,000/- for which his books of accounts had to be audited but the assessee failed to get his books of accounts audited. In view of the same, the Assessing officer initiated penalty proceedings u/s 271B of the Act at the time of assessment proceedings. The assessee was issued a notice for penalty u/s 271B of the Act by the Assessing officer on 25.03.2016. The assessee did not respond to the notices and the Assessing officer imposed a penalty of Rs.79,287/- being 1% of the gross turnover of the assessee.

4. Aggrieved by the order of the Assessing Officer, the assessee carried the matter in appeal before the Ld. CIT(A) who has confirmed the penalty imposed by the Assessing Officer observing as follows:

“During the course of appellate proceedings, the appellant has not filed any substantial submissions against the imposition of penalty. The appellant has only reiterated the submissions made during the quantum proceedings.

In view of the facts and circumstances as stated above, the penalty u/s 271B of the Act imposed by the Ld. AO is hereby confirmed.”

5. Aggrieved by the order of the Ld. CIT(A), the assessee is in appeal before us.

6. At the outset, Learned Counsel for the assessee submitted that the Hon'ble Tribunal has deleted the quantum addition in ITA No. 236/Rjt/2024 of the same assessee, vide order dated 17th March, 2025 for A.Y. 2008-09. Since, the Tribunal has deleted the quantum addition, therefore, no penalty should be imposed u/s.271B of the Act. Hence, the penalty should be deleted.



7. On the other hand, Learned DR for the revenue relied on the order of the Assessing Officer.

8. I have heard both the parties and perused the materials available on record. I note that the Tribunal has deleted the quantum addition made by the Assessing Officer, on which, the penalty was initiated by the Assessing Officer u/s.271B of the Act vide the appeal of the assessee in ITA No.236/Rjt/2024, order dated 17.03.2025. Since, the Assessing Officer has imposed the penalty based on the quantum involved in appeal of the assessee and the said quantum has been deleted by the Tribunal. Therefore, now the penalty should not be imposed because there is no base to impose the penalty. I note that once the foundation fails, the superstructure also fails i.e the addition also is to be deleted. In this regard, I place reliance on the legal maxim "*Sublato fundamento cadit opus*" (meaning thereby that foundation being removed, structure /work falls). Hence the initial action of the Revenue to impose penalty itself is not in consonance with law, as entire turnover of the assessee, for which addition was made by Assessing Officer has been deleted by the Tribunal, then all the subsequent and consequential proceedings would fall through for the reason that illegality strikes at the root of the penalty order. Therefore, based on these facts and circumstances, I delete the penalty.

9. In the result, appeal filed by the assessee is allowed.

Order pronounced in the open court on 25/11/2025.

Sd/-
(Dr. Arjun Lal Saini)
लेखा सदस्य/Accountant Member

राजकोट /Rajkot

//True Copy//

दिनांक/ Date: 25/11/2025

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :



- अपीलार्थी/ The Appellant
- प्रत्यर्थी/ The Respondent
- आयकर आयुक्त/ CIT
- आयकर आयुक्त(अपील)/ The CIT(A)/(NFAC), Delhi.
- विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, राजकोट/ DR, ITAT, RAJKOT
- गार्डफाईल/ Guard File

By order/आदेश से,

Assistant Registrar/Sr. PS/PS
ITAT, Rajkot